

The Retailers' Occupation and Use Tax Acts provide an exemption for sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. See 86 Ill. Adm. Code 130.430. (This is a GIL).

May 2, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 6, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are independent truck and heavy equipment appraisers handling claims and have run into a conflict pertaining to the appropriate sales tax to be applied on the appraisals as written in your state. There are several issues that we would like to address and would appreciate a written response in order to clarify the tax issue for any future claims, not only for the representatives in our company but also for the repair shops.

Most of the vehicles we inspect are trucks, trailers, containers and heavy equipment both on and off the road. Most of the trucking claims are dealing with the companies or individuals that have ICC numbers and designations. Others have local state exemption numbers.

Many of the shops in which we inspect the vehicles are not applying sales tax appropriately or arguing contrary to information we have been given pertaining to the application of sales tax for vehicles with ICC designation. Vehicles with the ICC designation are usually over the road semi tractor-trailers over 26,000 lbs. although occasionally there are vehicles under 26,000 lbs. such as a straight/van truck as well as vehicles over 26,000 lbs. that are not identified as a semi vehicle such as a dump truck and straight truck.

There has also been an issue brought up from time to time pertaining to whether or not the vehicle is registered in or outside of the particular state in which we are inspecting the vehicle and that the sales tax application changes accordingly.

We acknowledge that several states do not apply sales tax on overseas containers.

We would appreciate the answer to the following questions:

1. With an ICC number, are the following vehicles taxable in your state:

- a. Semi tractor and trailers over 26,000 lbs.
- b. Overseas containers
- c. Chassis trailers (for overseas containers)
- d. Commercial trucks under 26,000 lbs. (straight trucks)
- e. Commercial trucks non-semi over 26,000 lbs. (dump trucks)
- f. Heavy machinery on and off load (bull dozers, fork lifts, backhoes)

2. If tax is applicable, is it on parts, labor, or both?

If there are any special forms or applications that must be completed in order to receive this exemption, we would appreciate a copy of same or the identifying form name and number.

As a general proposition, Illinois Retailers' Occupation Tax and Use Tax apply to gross receipts from retail sales of tangible personal property for use in Illinois, unless one can document an exemption. This includes sales of trailers, tractors, containers, trucks, chassis trucks, and heavy machinery such as backhoes, bull dozers, forklifts and end loaders. Section 1 of the Retailers' Occupation Tax Act (35 ILCS 120/1) defines "gross receipts" from sales of tangible personal property at retail to mean the total selling price or the amount of such sales. The "selling price" or "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, or any other expense whatsoever. See 86 Ill. Adm. Code 130.410.

There is a rolling stock exemption from Illinois Retailers' Occupation Tax and Use Tax and it is described in the enclosed copy of 86 Ill. Adm. Code 130.340. As this section indicates, the exemption is available to interstate carriers for hire for tangible personal property used as rolling stock moving in interstate commerce.

The exemptions applies to sales of tangible personal property to lessors under leases of one year or longer executed or in effect at the time of purchase with interstate carriers for hire for use as rolling stock moving in interstate commerce. A lessor will not incur Use Tax on the purchase of the vehicle that is leased to the interstate carrier for hire for use as rolling stock moving in interstate commerce under a lease term of one year or longer. See 35 ILCS 105/3-55(b) and 120/2-5(12). If a lessor leases a vehicle to an interstate carrier for hire under a lease term of less than one year, the rolling stock exemption is also available because the tax does not apply to the use by (or sale to) lessors, owners, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. See 35 ILCS 105/3-55(c) and 120/2-5(13).

Effective August 14, 1999, motor vehicles, trailers, and property attached to those motor vehicles and trailers must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12-month period to qualify for the exemption. See 35 ILCS 120/2-51; and 86 Ill. Adm. Code 130.340(e). For other types of property used in interstate commerce, the interstate carriers must be able to show, from their books and records, that the property has moved in interstate commerce for hire on a regular and frequent basis in order to qualify for the exemption. Not all items of tangible personal property used on an interstate carrier for hire qualify for the rolling stock exemption. As explained in subsection (b) of Section 130.340, the exemption does not apply to fuel, jacks, flares, or other items that, although used in servicing the transportation vehicle, do not become a part of such vehicle.

Purchasers also must be recognized by the appropriate federal or state regulatory agency as interstate carriers for hire and have received a Certificate of Authority to engage in interstate commerce. Please note that it is not the type of item that determines whether or not it qualifies as rolling stock, but rather, how a qualifying interstate carrier uses the item. In addition to receiving the proper Certificate of Authority, purchasers should be aware that only those items used specifically as rolling stock would qualify. See 86 Ill. Adm. Code 130.340.

When making a purchase of qualifying property, the purchasers must provide the sellers with a certification that they are interstate carriers for hire and that they are purchasing the property for use as rolling stock moving in interstate commerce. If the purchasers are lessors, the purchasers must give the sellers a certification to that effect identifying the lessee interstate carriers for hire. See Section 130.340(f) for the requirements of this certification. Form RUT-7, Rolling Stock Affidavit, which is signed by the purchasers, is presently used to provide the required certification to claim the statutory exemption. A copy of this form can be downloaded from the Department's Web site, which can be accessed at www.revenue.state.il.us.

I hope this information is helpful. As noted above, the Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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